

REMARKS:

Claims 1-22 are pending in the application. By this amendment, claim 1 is amended for clarification purposes only, and claim 46 is newly presented. Applicants request reconsideration and allowance in view of the above, clarifying amendment and the following remarks.

Rejection

Claims 1, 3, 6-10, and 14-22 are rejected under 35 U.S.C. § 103 based on Richmond, U.S. 5,445,630, in view of Wood et al., U.S. 5,766,211. (Claim 1 is independent and the rest depend from claim 1 either directly or indirectly.) According to the Office Action, Richmond shows all claimed structural features recited in the claims, but not the materials used to construct the first and second parts of the connector. However, according to the Office Action, Wood discloses a fluid connector with rigid and elastomeric portions such that it allegedly would have been obvious to make the first and second portions of the Richmond connector with rigid and elastomeric portions, as well. Applicants traverse this rejection on several grounds.

First, the Examiner has essentially written out of the claim the limitation that the first and second portions are attached to each other by means of a combined friction coupling and snap fit connection. The Examiner does so by arguing that that is a statement of the function of the device and by pointing out that “it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.” Apparently, the Examiner has interpreted the term “are attached” as being used as a transitive verb (in the sense that someone joins the portions together); Applicants, on the other hand, have clearly intended it as an adjective (as in the sense that the portions exist or are configured to exist in a state of being joined together.) To clarify that it is the structural nature of the device being claimed and not the manner of use of the device, Applicants have sharpened the language of claim 1 to specify that the portions are mutually configured to facilitate attachment to each other by means of a combined friction coupling and snap connection.

Second, apparently changing positions with respect to the significance to patentability of the language relating to how the first and second portions are joined together (structurally speaking, of course), the Examiner asserts (emphasis added) that “[t]he Richmond device appears to have a friction fit between the first and second portions, which may snap into place.” Applicants firmly refute that assertion. Not only is it based improperly on conjecture – rejections are supposed to be based on what a reference actually shows or discloses, not what it “may” disclose or “appears” to disclose – but it is contrary to what Richmond clearly teaches.¹ In particular, Richmond discloses with respect to the embodiments shown in Figs. 2, 3, and 4 that a male luer fitting is bonded to the remainder of the spike. (See column 4, line 27 and column 6, line 12 of Richmond.) With respect to Figure 5, Richmond explains that that figure shows a spike with a female luer fitting, but that the spike is otherwise the same as the spike shown in Figs. 1-3 – i.e., the female luer fitting is presumably bonded to the body of the spike. In the embodiment shown in Fig. 6 – the specific embodiment on which the Examiner relies to support the rejection – the spike is vented. With respect to the luer fitting, Richmond says nothing other than that it is a female luer fitting with a valve. (See column 6, lines 38-53.) Given Richmond’s disclosure of the parts being bonded together in the embodiments of Figs. 2-4, the express similarity between the embodiments of Figs. 2-4 and Fig. 5, and Richmond’s silence on the matter with respect to the embodiment of Fig. 6, Applicants submit that the far more reasonable conclusion is that the portions are bonded together in the embodiment shown in Fig. 6 – not that they “appear” to fit together with a friction fit or “may” snap together.

Third, the rejection is clearly based on hindsight that rises to the level of impermissibility. While Applicants acknowledge that the Examiner must necessarily use some hindsight in order to properly search for references and examine the claims, once those references have been located, there must be some reason why, independent of that hindsight, it would have been predictable that one having skill in the art would have made the proffered combination. In this case, the Examiner points to the fact that Wood shows dual materials and asserts that one having skill in the art would have incorporated that feature into the device shown in Richmond. Applicants note, however, that the claims require more than just dual materials; they recite a

¹ The Examiner’s assertion is also contradicted by the indication that claim 2 is directed to

specific relationship as to which portion of the device is made from a more resilient material and which portion is made from a less resilient material. Given the dissimilarities between the devices of Richmond and Wood, and given Richmond's silence as to the nature of the materials employed between the first and second portions – in this regard, Applicants resubmit that they must be the same or similar to facilitate bonding them together – Applicants submit that there is no reason (other than impermissible hindsight) it would have been predictable that one having skill in the art would have modified the Richmond device to have the specific claim-recited relationship between the resilience levels of the respective parts.

Accordingly, Applicants traverse the rejection and request that it be withdrawn.

New Claim 46

New claim 46 is essentially the same as claim 2, indicated to be directed to allowable subject matter, rewritten in independent, slightly broader format.

Allowable Subject Matter

Claims 2, 4, 5, and 16 are indicated to be directed to allowable subject matter. In view of the foregoing, however, Applicants submit that all claims are in condition for allowance, and timely Notice to that effect is respectfully requested.

allowable subject matter.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 6730.020.NPUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner may directly contact the undersigned by phone to further the discussion.

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Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Tracy Druce", written in a cursive style.

Tracy W. Druce, Esq.
Reg. No. 35,493